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IN THE

Supreme Court of the United States

October Term, 1968

No. 498

NEWARK STEREOTYPERS' UNION NO. 18,
Petitioner,

v.

NEWARK MORNING LEDGER CO. AND NEWARK NEWSPAPER PUBLISHERS' ASSOCIATION,
Respondents.

PETITIONER'S REPLY BRIEF

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Preliminary Statement

The petition demonstrates that the refusal of an inquiry into witness tampering by the arbitration panel and the District Court constitutes a denial of petitioner's constitutional right to arbitral and judicial due process warranting review by this Court.

Respondents, in an obvious effort to obtain denial of the petition, attempt to obscure and suppress these important constitutional questions by presenting the case as involving mere matters of procedure which, they claim, justified the denial to petitioner of the hearing it repeatedly sought. Respondents do not even concede that petitioner was entitled to due process. The only reference to due

process in their brief is one "iffy" phrase so obscured as to be easily overlooked (Resp. br., p. 22).

Respondents argue:

1. That petitioner waived its right to an inquiry into witness tampering by the Committee by refusing to proceed with its witness after he had agreed to continue his testimony;

2. That the Committee did not deny but merely "deferred" a hearing on the charge of witness intimidation to the District Court;

3. That the District Court properly denied petitioner a hearing because petitioner "took no steps to obtain any evidence in support of its charge * * *" (Resp. br., p. 2).

These "questions presented" all assume that there was witness tampering, but seek to justify the shocking inaction with regard to it by the arbitration panel and the District Court, by charging petitioner with either waiving its rights or failing to pursue its remedies.

The petition has anticipated and answered the waiver argument (Pet. pp. 13-16). As the petition shows, the arbitration panel did not merely "defer" the hearing upon the witness intimidation charge but repeatedly denied such a hearing in refusing to direct the witness to state the reasons for his refusal to testify, or to accept petitioner's offer of proof that he had been interfered with, or to investigate whether any outside influence was exerted upon the panel. All these matters were ruled "irrelevant".

The only "question" raised by respondents which has not been anticipated and answered by the petition is the claim that the District Court was justified in denying a hearing on the witness tampering issue because petitioner

allegedly failed to take "steps to obtain any evidence in support of its charge . . ." (Resp. br., p. 2). This brief is limited to answering this claim.

Argument

Respondents contend that although petitioner was "advised as early as January 12, 1966" as to the course to be followed in connection with producing witnesses in the event that there was a later hearing in the District Court, petitioner took no steps to prepare for such a hearing by pretrial deposition or the issuance of trial subpoenas (Resp. br., pp. 21-22). In the face of the denial of any hearing by the District Court, respondents make the astounding statement that "petitioner was assured every opportunity of substantiating its charges and consciously failed to avail itself of such opportunity" (Resp. br., p. 22).

The following facts belie these assertions:

1. The award was not filed until June 30, 1966 (39a).

2. Petitioner made its motion to vacate the award within the three-month period prescribed by the United States Arbitration Act (§ 12) on eight affidavits setting forth the facts as known to the affiants regarding the stifling of petitioner's witness and the refusal of the panel to inquire or permit inquiry into those facts (42a-93a).

3. When these affidavits were filed, petitioner did not and could not know what, if any, answering affidavits would be filed or whether any such affidavits would raise triable issues of fact.

4. Upon receipt of respondents' opposing affidavits (111a-132a), which did raise issues of fact, petitioner applied on the oral argument for a hearing to try these issues in the event that the District Court decided that the award

should not be vacated for the failure of the arbitrators to receive, as material and relevant, evidence of witness tampering (24c-29c).

5. Unless such a hearing was granted, petitioner was in no position to invoke pretrial deposition procedures or to issue hearing subpoenas. Rules 26(d), 45(e)(1), Fed. Rules Civ. Proc.

6. In fact, as petitioner's counsel advised the District Court on the oral argument of the motion to vacate the award, petitioner was ready then and there to proceed with a trial of the issue, since a number of its witnesses were present in the courtroom ready to testify (24c-25c).

7. Had a hearing been granted, even the hostile witnesses, namely, Newhouse, Romano and McColley, were within reach of trial subpoenas and could have been brought before the Court at the instance of petitioner, if not voluntarily produced by respondents, without undue delay.

8. The District Judge gave no indication on the oral argument of the motion to vacate the award whether he would grant petitioner the hearing it sought, and did not render his decision until December 19, 1966.

9. It was not until February 6, 1967, when the order and judgment was entered, that petitioner's application for a hearing was denied (28a-29a).

10. Neither the District Court nor the Court of Appeals held that the refusal of any inquiry into the question of witness tampering was justified by what the respondents claim was a failure of petitioner to prepare for the trial of that issue.

Conclusion

Contrary to respondents' contention that "petitioner was afforded every opportunity of substantiating its charges and consciously failed to avail itself of such opportunity" (Resp. br., p. 22), petitioner has been deprived of its constitutional right to a hearing on the vital issue of witness tampering, both before the arbitration panel and in the District Court. Indeed, such a hearing has been opposed at every turn by the respondents, who thus far have been strangely successful in their opposition.

Dated: New York, New York
October 15, 1968

Respectfully submitted,

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